

APPROVING RESOLUTION

106 SOUTH PEARL STREET LLC PROJECT – RELEASE OF MORTGAGE LIEN

A regular meeting of the Albany County Capital Resource Corporation (the “Corporation”) was convened in public session in Suite 100 at 111 Washington Avenue in the City of Albany, Albany County, New York on December 4, 2024 at 5:00 o’clock p.m., local time.

The meeting was called to order by the (Vice) Chairperson of the Corporation and, upon roll being called, the following members of the board of directors of the Corporation were:

PRESENT:

Hon. Gary Domalewicz	Chairperson
Hon. William M. Clay	Vice Chairperson
Gene Messercola	Secretary
Michael Paparian	Treasurer
William Murphy	Director
Hon. Wanda Willingham	Director

ABSENT:

CORPORATION STAFF PRESENT INCLUDED THE FOLLOWING:

Kevin O’Connor	Chief Executive Officer
Amy Thompson	Chief Financial Officer
Christopher C. Canada, Esq.	Corporation Counsel
A. Joseph Scott, III, Esq.	Corporation Counsel

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No. 1224-__

RESOLUTION APPROVING (A) THE EXECUTION AND DELIVERY OF CERTAIN RELEASE DOCUMENTS RELATED TO A LOAN (THE “LOAN”) ISSUED BY THE ALBANY COUNTY CAPITAL RESOURCE CORPORATION TO ASSIST IN FINANCING THE PROJECT (AS DEFINED HEREIN), AND (B) THE RELEASE OF VARIOUS SECURITY DOCUMENTS RELATED THERETO.

WHEREAS, pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”) and Revenue Ruling 57-187 and Private Letter Ruling 200936012, the County Legislature of Albany County, New York (the “County”) adopted a resolution on September 8, 2014 (the “Sponsor Resolution”) (A) authorizing the incorporation of Albany County Capital Resource Corporation (the “Corporation”) under the Enabling Act and (B) appointing the initial members of the board of directors of the Corporation, who serve at the pleasure of the County Legislature of the County; and

WHEREAS, in September, 2014, a certificate of incorporation was filed with the New York Secretary of State’s Office (the “Certificate of Incorporation”) creating the Corporation as a public instrumentality of the County; and

WHEREAS, the Corporation is authorized and empowered by the provisions of the Enabling Act to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities, and lessen the burdens of government and act in the public interest, and in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, the Enabling Act declares that the Corporation will be performing essential governmental functions; and

WHEREAS, to accomplish its stated purposes, the Corporation is authorized and empowered under the Enabling Act to acquire real and personal property; to borrow money and issue negotiable bonds, notes and other obligations therefore; to lease, sell, mortgage or otherwise dispose of or encumber any of its real or personal property upon such terms as it may determine; and otherwise to carry out its corporate purposes in the territory in which the operations of the Corporation are principally to be conducted; and

WHEREAS, in December, 2021 (the “Closing”), the Corporation issued a loan in the principal amount of \$200,000 (the “Loan”) to AACC Holdings LLC (the “Borrower”), a limited liability company duly organized and validly existing under the laws of the State of New York, for purposes of assisting in financing a project (the “Project”), said Project consisting of the following: (1) the acquisition of an interest in a parcel of land located at 106 South Pearl Street, in the City of Albany, Albany County, New York (the “Mortgaged Property”), together with (a) an approximately 3,148 square foot building located thereon (the “Existing Facility”) and (b) a 1.55 acre parking-lot with approximately 40 spaces and LED light fixtures, and (2) the acquisition and installation thereon and therein of various machinery and equipment (the “Equipment”) (the Mortgaged Property and the Equipment hereinafter collectively referred to as the “Premises”), all of the foregoing to be owned and operated to provide accessible space to non-profit organizations who provide healthy food options and food accessibility programs necessary in the historically underserved South End Neighborhood; and

WHEREAS, simultaneously with the issuance of the Loan, the Corporation, the Borrower, and The African American Cultural Center of the Capital Region, Inc. (the “Corporate Guarantor”) executed and delivered a loan and use agreement dated December 17, 2021 by and among the Corporation, the Borrower, and the Corporate Guarantor (the “Loan Agreement”) pursuant to which (A) the Corporation agreed to make the Loan to the Borrower for the purpose of assisting in financing the Project, and (B) in consideration of the Loan, the Borrower agreed (1) to cause the Project to be undertaken and completed, and (2) to use the proceeds of the Loan for the payment of the costs of the Project; and

WHEREAS, as security for the Loan, the Borrower executed and delivered to the Corporation a promissory note dated December 17, 2021 (the “Note”) from the Borrower to the Corporation, and the Corporate Guarantor executed and delivered an unconditional guaranty dated December 17, 2021 (the “Guaranty”) from the Corporate Guarantor to the Corporation; and

WHEREAS, as additional security for the Loan, the Borrower executed and delivered to the Corporation (1) a mortgage and security agreement dated December 17, 2021 (the “Mortgage”), which Mortgage among other things, (a) granted to the Corporation a mortgage lien on, and a security interest in, among other things, the Premises and all rights of the Borrower under the Loan and (b) assigned to the Corporation the rents, issues and profits of the Premises and (2) an assignment of rents and leases dated December 17, 2021 (the “Assignment of Rents,” and collectively with the Note, the Guaranty, and the Mortgage, the “Corporation Security Documents”), which Assignment of Rents, among other things, assigned to the Corporation (a) the rents, issues and profits of the Premises and (b) all leases, subleases, licenses or occupancy agreements affecting the Premises; and

WHEREAS, in addition to the Loan from the Corporation, the Project was also financed by the proceeds of loans (the “Bank Loans”) issued by Cap Com Federal Credit Union and Key Bank National Association, respectively (collectively, the “Bank Lenders”); and

WHEREAS, in November, 2024, the Corporation received various communications (the “2024 Request”) from counsel to Advance Albany County Alliance LLC (the “Purchaser”) (A) summarizing the status of the Project; (B) indicating the Purchaser’s intention to purchase the Premises; (C) indicating the Borrower’s and Purchaser’s inability to pay all amounts outstanding due to the Corporation after completing payment to the Bank Lenders; (D) requesting that the Corporation enter into a certain agreement of purchase and sale and release of mortgage liens (the “Release Agreement”) by and among the Borrower, the Purchaser (or an affiliate thereof) and the Bank Lenders, which Release Agreement would, among other things, satisfy and discharge the Loan and the Corporation Security Documents (collectively referred to hereinafter as the “Release”); and (E) indicating that the execution and delivery of the Release Agreement would serve as an alternative to foreclosure proceedings; and

WHEREAS, the Albany County Local Development Corporation (the “Alliance”) has agreed to provide to the Corporation a letter agreement (the “Letter Agreement”) to be entered into by the Alliance and the Corporation, pursuant to which the execution and delivery of the Release Documents (as defined herein) by the Corporation is conditioned upon the Purchaser or the Alliance, upon the sale of the Premises to an entity other than Albany County or a not-for-profit entity by either the Purchaser or the Alliance, making payment to the Corporation from the proceeds of such sale, less any and all documented costs and expenses incurred by the Purchaser or the Alliance related to the Purchaser’s acquisition and ownership of the Premises, in an amount equal to the unpaid amount due under the Note, including any interest and penalties; and

WHEREAS, based on discussions with the Borrower and Corporation counsel, the members of the board of directors of the Corporation desire to enter into (A) the Release Agreement, (B) the Letter Agreement and (C) any other related documents required to discharge the Loan and Corporation Security Documents (together with the Release Agreement and the Letter Agreement, the “Release Documents”); and

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE BOARD OF DIRECTORS OF ALBANY COUNTY CAPITAL RESOURCE CORPORATION, AS FOLLOWS:

Section 1. The Corporation makes the following findings and determinations with respect to the Release Documents:

(A) The execution by the Corporation of the Release Documents constitutes continuing administration and management of the Corporation (not new programs or a major reordering of priorities), and is therefore a “Type II action” under Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations”) (the SEQR Act and the Regulations being collectively referred to as “SEQRA”) and, according, no further action by the Corporation under SEQRA is required;

(B) By virtue of the Enabling Act, the Corporation has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Enabling Act and to exercise all powers granted to it under the Enabling Act; and

(C) It is desirable and in the public interest for the Corporation to execute the Release Documents.

Section 2. In consequence of the foregoing, and subject to the following additional conditions: the execution and delivery of the Letter Agreement, in form and substance satisfactory to the Corporation, the Corporation hereby determines to: (i) authorize the Release Documents; (ii) subject to approval of the form and substance of the Release Documents by counsel to the Corporation, approve the form and substance of the Release Documents; and (iii) authorize the execution and delivery of the Release Documents.

Section 3. The Corporation hereby authorizes the Chairperson of the Corporation to execute the Release Documents.

Section 4. All action taken by the Chairperson of the Corporation with respect to the Release Documents prior to the date of this resolution is hereby ratified and confirmed.

Section 5. The officers, employees and agents of the Corporation are hereby authorized and directed for and in the name and on behalf of the Corporation to do all acts and things required or provided for by the provisions of the Release Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of this resolution and to cause compliance by the Corporation with all of the terms, covenants and provisions of the Release Documents binding upon the Corporation.

Section 6. This resolution shall take effect immediately.

Hon. Gary W. Domalewicz	VOTING	_____
Hon. William M. Clay	VOTING	_____
Michael J. Paparian	VOTING	_____
Gene Messercola	VOTING	_____
William Murphy	VOTING	_____
Hon. Wanda Willingham	VOTING	_____

The foregoing resolution was thereupon declared duly adopted.

[Remainder of the page left blank intentionally]

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

I, the undersigned (Assistant) Secretary of Albany County Capital Resource Corporation (the “Corporation”), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the board of directors of the Corporation, including the resolution contained therein, held on December 4, 2024 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Corporation had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the board of directors of the Corporation present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Corporation this 4th day of December, 2024.

(Assistant) Secretary

(SEAL)